

WISHA ADVISORY COMMITTEE (WAC)
MEETING MINUTES
September 15, 2004
L&I Headquarters Building, Room S117

Members Present: Sharon Ness, United Staff Nurses Local 141; Claude Golden, The Boeing Company; Tom Egan, Board of Industrial Insurance Appeals; Larry Bindner, WA and Northern Idaho District Council of Laborers; Randy Loomans, Washington State Labor Council; Glen Foresman, Top Food and Drug; Ed Wood, Jr., Communication Workers of America Local 7818; Tim Gottberg, GLY Construction and Michael Silverstein, Department of Labor & Industries

Guests: Scott LaBar, Educational Service District #112; Donovan Quebedeaux and Amy Brackenbury, Building Industry Association of Washington; Gregory Chryst, OSHA Region X; Sharon Morris, University of Washington; Carolyn Logue, National Federation of Independent Business; Bill Kessler and Nancy Dicus, Timber Operators Council; Linda George, WestFarm Foods; Ann Jarvis, Associated Builders and Contractors of Western Washington; John Dziedzic, Washington State Senate; Dan Fazio, Washington State Farm Bureau; Amber Carter, Association of Washington Business; Amy Evans, House Republican Caucus; Jill Reinmuth, House Commerce and Labor Committee; Clif Finch, Washington Food Industry and Rick Slunaker, Associated General Contractors

Staff Present: Steve Cant, Michael Wood, Michael Foley, Carl Hammersburg, Kerry Ivey, Ken Mettler, Anne Soiza, Joel Sacks and Chuck Hitchings

Recorder: Gerald Franks

Opening Remarks – Michael Silverstein

Michael said we've received several nominations for the WAC employer vacancy (list distributed). The new member will be announced within the next few days. Michael was pleased with the broad response of nominees for the position.

Dates were approved for 2005 WISHA Advisory Committee meetings:

- February 9 from 9:00-noon in room S126
- June 8 from 9:00-noon in room S126
- September 14 from 9:00-noon in room S117
- November 9 from 9:00-noon in room S117

Michael announced that we would be taping the meetings from this point forward. This has been a useful tool for other committees.

SHARP Update – Michael Foley

Michael shared copies and provided a brief overview of the following recently published SHARP reports:

- *A FACE Fatal Facts* report about a ruptured truck radiator hose that killed a worker.

- Two *SHARP Focus* reports - one that summarizes Washington State Fund workers' compensation claims data for injuries resulting from falls-on-the-same-level and another that summarizes Washington State workers' compensation claims data for falls from elevation.
- A *SHARP FACE* report about a worker killed in 2000 when he was struck by a dump truck at a city street construction site.
- Five *Fatality Narratives*:
 - A construction laborer falls through a skylight.
 - A passing vehicle strikes a worker changing a flat tire.
 - A sider falls from a failed pump jack scaffolding.
 - A tree strikes a timber faller.
 - A worker falls from a scaffolding being erected.
- A report summarizing logging-related fatalities in Washington State from 1998-2003.
- Two brochures about worker-related asthma and the link between asthma and western red cedar.

These publications are also available on the SHARP website. Michael also mentioned that Marty Cohen had recently left SHARP for a position at the University of Washington and that they are currently recruiting for his replacement.

WISHA Website Presentation – Marilou Russell

Marilou said Training and Outreach embarked on a project in January to redesign the safety tab on the L&I website. The redesign was launched in June and incorporates many suggestions from customers. A summary of the improvements include:

- The addition of a “safety basics” area to the main page.
- A safety and health primer where users can find posters, core rules, request assistance and go to other areas of the website with one click
- An addition of Certification and Permits to the Topic Center.
- In the training area, we added one-click selections for required training and plans, resources for trainers and safety forms and publications.
- In the Courses, Videos and Workshops area, users can select online safety courses and receive a certificate upon completing the entire course.
- Under the new Hazard Prevention tab, users can find idea banks on ergonomics and noise reduction (a machine guarding idea bank to be added soon) along with hazard alerts, health and workplace diseases, ergonomics and chemical safety.
- The Research area is a condensed version of the old safety site (SHARP).
- In the Rules and Policy area users can find a rule, see current rule activity, tools for specific rules, policies and guidelines and related laws (RCWs).

Anne Soiza said user comments have been very positive to the changes.

There was a request to add more advisory committee information to the WISHA website such as meeting dates, minutes, member information, etc. Michael Silverstein said that this information would be added to the website in the near future.

Fraud and Abuse Initiative – Carl Hammersburg

This is one of L&I's five high-priority projects designed to hold down the cost of industrial insurance and is in response to concerns expressed by employers and workers. L&I set out to overhaul the way it manages claims and how it uncovers, investigates and pursues fraud and abuse of the system by workers, employers and health-care providers. The agency reassigned additional people to combat fraud and abuse, and it adopted new procedures for investigations and audits. In addition, L&I requested legislation that would make it easier to prove fraud and harder to avoid business taxes. The legislation passed in March.

Carl said one of the goals of the program is to coordinate various activities within the fraud and abuse area of L&I. New investigator and auditor positions are being added and some existing positions are being transferred to the anti-fraud effort. The agency recently reorganized its investigations, auditing and collections efforts. L&I is sharing information from the Specialty Compliance and Prevailing Wage divisions and other state agencies such as Employment Security. A detection and tracking unit will automate crosschecking with WISHA inspections over to the Industrial Insurance side and visa versa. We've also created a significant cases unit to coordinate activities on large cases that cross many regional or program boundaries.

The next steps will be to propose a budget package to strengthen the links in the fraud and abuse area and the hiring of more staff in the compliance inspection and electrical areas. Our audit system will also need more automation to cut down on paperwork so our auditors will have more time to work in the field. With the additional staff, L&I will conduct more validity checks to make sure new workplace-injury claims are legitimate. L&I's auditors will perform more random audits of businesses to make sure they're accurately reporting hours worked and paying premiums. New software programs will improve our ability to detect duplicative and improper billings by health-care providers. We will employ a "jeopardy assessment" if there is a flight risk for out-of-state businesses. We also plan to strengthen our links with WISHA to raise the level of referrals.

Program successes so far include a recovery of \$500,000 in prevailing wages and \$4.5 million from unregistered contractors - a 42% increase from 2003. Carl emphasized that it is important to build on this success. Carl thanked Michael and his staff for their assistance in this effort and urged those in attendance to contact his division if they have any questions or information.

Michael Silverstein mentioned that it is our belief that most organizations use L&I services honestly and completely but that the small number of entities that take advantage of the system make a huge impact as far as higher worker compensation premiums and lack of fairness.

Return to Work Initiative – Kerry Ivey

This is another of L&I's five high-priority projects. Kerry said that when a worker is injured this creates major costs both to the employee and employer. There is a connection between the duration of a workers' claim and long-term loss of earning power. The longer an injured worker is off work, the harder it is for them to return to their original job and wage. A worker who makes the state average wage loses \$994 after only two months on time loss. In a worse-case scenario, missing ten months of work and returning to a minimum wage job can result in a loss of \$22,298. A 1994 quality of life research study showed that injured workers off work for 90 days or more were 62% more likely to be off work after one year; 52% remained off work for 21 months and 22% never returned to work. Lengthy time-loss claims drive up workers' compensation rates for the employer and increase the cost of operating the workers' compensation system. A 2004 National Academy of Social Insurance study showed claims that involve wage replacement accounted for about 22% of claims but are responsible for 94% of the costs to the system. Kerry said return-to-work makes good sense for the employer to maintain a well-trained workforce and reduce claims costs. For the worker it helps with recovery, increases self-esteem and minimizes wage losses.

In January a proposal was put forward and implemented in March for an Early Return-to-Work (ERTW) process team that required significant staff training, computer programming and education. Kerry said when an injured worker has received time-loss benefits for 14 days, his or her claim is now assigned to an ERTW team in one of L&I's local offices. Under the old system, it took up to four months before assistance was provided. Members of the teams that consist of vocational, therapist and nurse consultants, help employers implement medically appropriate return-to-work options. More complicated claims may be referred to a private sector vocational consultant for early intervention.

Initial reaction to ERTW from injured workers, employers and medical professionals has been very positive. The assignment duration previously had been 20 days but the teams have so far referred 1,200 workers for services to the private sector within 14 days. The medium timeframe for all referrals under the old system was about 114 days but so far has decreased to 80 days. In the first four months, ERTW teams have returned 1,027 workers to work.

Kerry said some areas of the program being monitored for analysis include the outcome of cases referred to the private sector, service timeliness and the long-term employment of injured claimants after they have returned to work.

Ergonomics WRD Discussion – Michael Wood

Michael Silverstein started by saying that after the repeal of the ergonomics (ergo) rule, a regional directive was produced that directed regional staff to not initiate ergo enforcement before Michael Wood's office was consulted. The WRD was also submitted for review to OSHA Region 10. A response was received back saying that OSHA was not fully satisfied with some of the language in that original WRD and that we should assess ergo complaints in light of the various general requirements that WISHA has had in its rules for many years. A revised draft (WRD 10.05) was presented today that incorporates comments from the March meeting discussion of the OSHA letter and separate discussions with WISHA staff, Sharon Ness and Claude Golden (WAC representatives).

Michael Wood said for a number of years WISHA did some ergo enforcement using both the safe workplace standard and the accident prevention standard. We suspended using those standards when the ergonomics rule was adopted. When the rule was repealed, a new WRD was issued with instructions to not initiate enforcement in regards to ergonomic issues unless Michael's office was consulted. The draft now being considered would replace that WRD. Michael discussed the key features of the newest draft:

- A background statement (Note: The background statement has been largely eliminated in the subsequent draft based on suggestions at the meeting).
- A statement in scope and application section indicating that the WRD creates no obligations for anyone outside the department – this is consistent with all WRD's, which provide direction to L&I staff involved in applying various WISHA provisions but which do not and cannot create obligations for anyone else.
- An interpretive guidance section - references the general duty/safeplace standard and the accident prevention program standard as applying to ergonomic issues, although it indicates that the accident prevention program standard will not be used.
- A consultation protocols section - i.e. how technical resources will be used (files, etc.).
- An inspection protocols section – Michael mentioned that the reference to chapter 1C of the WISHA compliance manual should be chapter 2. This section includes a statement that before an ergo inspection is initiated, the supervisor will consult with the senior program manager for WISHA Policy and Technical Services.
- Other highlights of the inspection protocols section:
 - This draft indicates that enforcement staff would not be applying the accident prevention program standard.
 - Guidelines to apply the safe workplace standard.
 - Violations will not be issued without consultation with central office staff.
 - Voluntary Guidelines issued by L&I - will not be used as the basis for a citation even with evidence of employer knowledge. The language here is more explicit than OSHA guidelines.

In addition to the draft WRD, the WISHA compliance manual guidance to safeplace and the OSHA website section relating to ergonomics enforcement was also distributed to the committee.

As a result of questions and comments from committee and audience members on the draft, a side-by-side comparison document of WISHA and OSHA ergonomics language will be developed for committee review. The “background section” will be removed and

a revised second draft will be distributed by September 24 to the committee and stakeholders for additional comments. Comments can be submitted to Michael Wood's office until November 1 for incorporation into the revised draft for discussion at the November 10 WAC meeting. Michael Wood reminded the committee and attendees that until the WRD is adopted, no ergonomic inspections are being performed without prior consultation with his office.

Miscellaneous:

Anne Soiza reminded everyone that the 2004 Governor's Industrial Safety and Health Conference is being held in Spokane on September 29th and 30th.

With no further business, the meeting was adjourned.

Next Meeting – All

The next meeting of the WISHA Advisory Committee is scheduled for November 10, 2004, in the L&I Headquarters building, from 9:00 a.m. to noon in S117.

Tentative agenda items for November:

- SHARP Update
- Results of Cost Allocation in Phase II Presentation
- Prevention Initiative
- Cholinesterase Monitoring Update
- Ergonomics WRD

Future meetings:

February 9, 2005 from 9:00-noon in room S126

June 8, 2005 from 9:00-noon in room S126

September 14, 2005 from 9:00-noon in room S117

November 9, 2005 from 9:00-noon in room S117